

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Queensland Ocean Beach Fishery, May 2021

(Issued by the authority of the delegate of the Minister for the Environment specified in the enabling legislation)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) places certain obligations on the Commonwealth to protect and conserve Australia's native wildlife by regulating international trade in order to protect targeted species against over exploitation and to protect Australian and international ecosystems.

Section 303DB of the EPBC Act provides for the establishment of a list of exempt native specimens (the list). Specimens included in the list are exempt from the trade control provisions that apply to regulated native specimens.

Purpose and operation

On 15 February 2021 the Queensland Department of Agriculture and Fisheries (QDAF) applied for assessment of the Queensland Ocean Beach Fishery under wildlife trade and protected species provisions of the EPBC Act. In assessing this application, the Department of Agriculture, Water and the Environment (the Department) sought public comments on the application and information from QDAF to assess the management arrangements for the fishery.

The purpose of this instrument is to **include** in the list specimens that are or are derived from fish or invertebrates taken in the Queensland Ocean Beach Fishery with notations that inclusion of the specimens in the list are subject to restrictions or conditions that the specimen, or the fish or invertebrate from which it is derived, was taken lawfully, and that the specimens are included in the list while a declaration as an approved wildlife trade operation is in place for the Fishery as specified in the **Schedule**.

Incorporation

All Queensland legislation referred to in the instrument is incorporated as in force at the time this instrument commences. All Queensland legislation incorporated by reference in the instrument can be freely accessed on the Queensland Legislation website:

<https://www.legislation.qld.gov.au/> (as of May 2021).

- *Fisheries Act 1994*
- Fisheries (General) Regulation 2019,
- Fisheries (Commercial Fisheries) Regulation 2019
- Fisheries Declaration 2019
- Fisheries Quota Declaration 2019

Commonwealth Acts and disallowable instruments (or instruments which were disallowable under Commonwealth legislation at any time before 1 January 2005) referred to in this

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instrument are incorporated as in force from time to time (section 14 of the *Legislation Act 2003*). However, references to Commonwealth instruments which are exempt from disallowance are incorporated as in force at the time this instrument commences (section 14 of the *Legislation Act 2003*).

All Commonwealth legislation can be freely accessed at the Federal Register of Legislation – <https://www.legislation.gov.au/>.

Strategic assessment not required

Subsection 303DC(1A) of the EPBC Act requires the Minister, in deciding whether to amend the list, to rely primarily on the outcomes of any assessment carried out for the purposes of Divisions 1 or 2 of Part 10 of the EPBC Act.

A strategic assessment is only required for fisheries managed under the *Fisheries Management Act 1991* (Cth) or the *Torres Strait Fisheries Act 1984* (Cth). A strategic assessment may be made for commercial fisheries under Division 1; however, there are no current strategic assessments in respect of the fishery from which the specimens listed in the Schedule are taken or derived.

The fishery listed in the **Schedule** to the instrument are not managed by the Commonwealth under the aforementioned Acts. Therefore, the EPBC Act does not require there to be a strategic assessment for the purposes of Part 10 of the Act in relation to fishery named in the **Schedule**.

Precautionary principle

Under section 391(1) of the EPBC Act, the Minister must take account of the precautionary principle when deciding whether to amend the list and when deciding whether to declare an operation to be an approved wildlife trade operation.

Section 391(2) of the EPBC Act provides that the precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Assessment of the fishery identified a range of issues that require attention by QDAF. The conditions proposed for inclusion on Part 13A approvals are designed to address these issues and represent a precautionary approach to the management of environmental uncertainty and risk. The management regime, when supported by these conditions is expected to be enough to prevent serious or irreversible environmental damage being caused by this fishery.

Specimens that may be included in the list

The list established under section 303DB(1) of the EPBC Act **must not include** a specimen that belongs to taxa listed under section 209 of the EPBC Act (Australia's List of Migratory Species), or specimens that belong to taxa listed under section 248 of the EPBC Act (Australia's List of Marine Species).

The list established under section 303DB(1) of the EPBC Act **must not include** a specimen that belongs to an eligible listed threatened species unless the conditions in subsection 303DB(6) are satisfied. Under the EPBC Act, **eligible listed threatened species** are those species listed in the extinct, extinct in the wild, critically endangered, endangered, or vulnerable categories established under section 178 of the EPBC Act (see sections 303BC and 528 of the EPBC Act).

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Those specimens that belong to **species listed in the conservation dependent category** of the EPBC Act **are not eligible listed threatened species** and may therefore be included in the list, subject to the conditions provided in the notation.

In accordance with section 303CA of the EPBC Act, specimens that are derived from taxa that are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are not included in the list.

Assessment of specimens

In determining to include the specimens in the list, the Minister's delegate had regard to the Australian Government's 'Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition'. These guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements.

Consultation

Subsection 303DC(3) of the EPBC Act provides that before amending the list, the Minister for the Environment must consult such other Commonwealth minister or ministers and such other minister or ministers of each state and self-governing territory, as the minister considers appropriate. The minister may also consult with such other persons and organisations as the minister considers appropriate.

The Queensland Department of Agriculture and Fisheries has been consulted and supports amending the list to include product derived from the Queensland Ocean Beach Fishery.

In addition, the proposal to amend the list was advertised on the Department's website and comment was invited from interested persons 22 February 2021 until 25 March 2021 (a total of at least 20 business days).

Seven comments were received. Six comments were generally supportive of the fishery's operations. However, one submission raised concerns regarding the Ocean Beach Fishery being regulated as part of the broader East Coast Inshore Fishery (ECIF), including operation of the fishery under an ECIF harvest strategy. The submission suggested the commercial catch limit for mullet be reduced to zero in Queensland, and that QDAF further cooperate with the NSW Department of Primary Industries to establish shared target and limit reference points for shared target stocks, including mullet and Tailor. The submission also recommended all species caught be reported at species level and that more independent data validation be introduced for the fishery. The submission also recommended that the Level 2 ERA be published.

These matters were considered throughout the assessment of the fishery and have either been addressed by QDAF or are being addressed via conditions on wildlife trade (Part 13A) approvals granted in association with this amendment of the List of Exempt Native Specimens.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The instrument commences the day after it is registered.

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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Simon Banks

Acting First Assistant Secretary

Heritage, Reef and Wildlife Trade Division